



EX PARTE OR LATE FILED

November 18, 1998

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Notice of Ex Parte Presentation; CC Docket No. 96-98; CS Docket 95-184; CCBPol 97-9; CC Docket No: 98-146

Dear Ms. Salas:

On November 17, 1998, Bob Berger, Barry Ohlson, Steve Merrill, Larry Spiwak and the undersigned, on behalf of *WinStar Communications, Inc.* ("WinStar"), met with the following FCC personnel: Larry Strickling, Chief of the Common Carrier Bureau, Jordan Goldstein, Jonathan Askin and Jeffrey Lanning. During the meeting, WinStar discussed its positions on record in the above-captioned proceedings concerning non-discriminatory access to buildings and rights-of-way. Attached is the material that was distributed during the meeting. Pursuant to Section 1.1206(a) of the FCC's rules, 47 C.F.R. § 1.1206(a), we are filing with the Secretary an original and 10 copies of this notice of *ex parte* presentation.

Should there be any questions regarding the above, please do not hesitate to contact the undersigned at 202-833-5678.

Very truly yours,

Joseph M. Sandri, Jr.
VP & Regulatory Counsel

Enclosures

cc: Larry Strickling
Jordan Goldstein
Jonathan Askin
Jeffrey Lanning

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Winstar Communications, Inc.

1146 19th Street, N.W. • Suite 200 • Washington, D.C. 20036 • TEL 202 833 5678 • FAX 202 659 1931

WinStar Talking Points:

Goal/Purpose of Section 706 Proceeding:

- (1) True issue in this case is *not* interconnection & co-location *per se*, but to ensure that FCC is doing everything in its powers to promote, facilitate, and accelerate new alternative facilities-based loop plant.
- (2) *If market performance is ever to improve and lead to tangible de-regulation, then FCC must move away from static, incumbent-centric "perpetual resale model" of current loop plant – i.e., FCC must affirmatively promote new facilities based entry for local loops!*
- (3) Accordingly, while the FCC's current proposal arguably might help spur additional facilities-based entry, WinStar wants to remind the Commission that unless the other significant entry-detering regulatory barriers to entry that were not specifically addressed in either the NPRM or NOI (*see, e.g. TEC pleading*) are eliminated, then this entire exercise is potentially will be rendered meaningless in practice.

"Tales from the Trenches" – The Economic Realities of Being a CLEC:

- (A) Intermediate and long-term competition is not sustainable absent facilities-based competition in the local loop – *i.e.*, deployment of competing pathways to the end user.
- (B) The demand for local loop competition is here today – the problem is that far too many structural and regulatory barriers (*e.g.*, building access) remain that prevent alternative loop plant deployment in any kind of expedited fashion. Thus, believing that a policy based upon the notion that "through resale, sufficient consolidated alternative demand will inevitably lead to new entry" can actually substitute for demonstrable policies that affirmatively remove barriers to entry just doesn't work.
- (C) While structural separation sounds good in theory, in practice it has little efficacy absent TOTAL separation (*see, e.g.*, failure of Rochester experiment). Indeed, an incumbent firm has neither any true incentive to divest itself *voluntarily* of monopoly bottleneck parts, nor any true incentive to stay structurally separated permanently if politically pressured to disaggregate in the short-term. *Only additional facilities-based entry for local loop facilities will create sufficient pressure to mitigate this inevitable conduct.*
- (D) Although many at the moment are enamored of xDSL technology, xDSL is only this year's fancy electronics – you buy the piece-parts from a commercial vendor like DSC/Alcatel and slap them *on the incumbent's local loop*.

By contrast, WinStar and other fixed wireless vendors today provide xDSL equivalent services directly to the end user.

- (E) Resale is a means to an end, not the ultimate solution.
- (1) Resale serves a very useful purpose in competitive markets (e.g., protects against wasted resources; pro-competitive contestable effect.) Moreover, resale permits new entrants (including WinStar) to have “appearance” of ubiquity (see, e.g., *FCC’s 1980 WATS/Resale Decision*).
 - (2) Without concurrently promoting additional facilities-based entry, however, static perpetual resale model may impose more economic costs than benefits received.
 - (3) This is the lesson of *Competitive Carrier* – i.e., performance of domestic IXC market did not start to improve demonstrably until there were competing networks, hence the opportunity for stranded capacity in fact, hence development of a second tier wholesale market for resellers sustainable per market competition itself with significantly lessened regulation and in some markets complete deregulation.

Conclusion:

- With the exception of the local loop, switching, backhaul transmission, *etc*, effectively are commercial components which, if you have the capital, firms can obtain easily.
- Absent primary focus on deployment of competitive local loops, therefore, what remains merely is in practice what amounts to a game of arbitraging the piece parts of the incumbent at the margins.
- *Thus, we don’t need more “competitors” (i.e., arbitrageurs) per se – what we need are more loops!*
- Why? There IS no long-term sustainable resale/unbundled loop model that translates in practice in the market place, UNLESS there are competing networks.



Who Is WinStar?

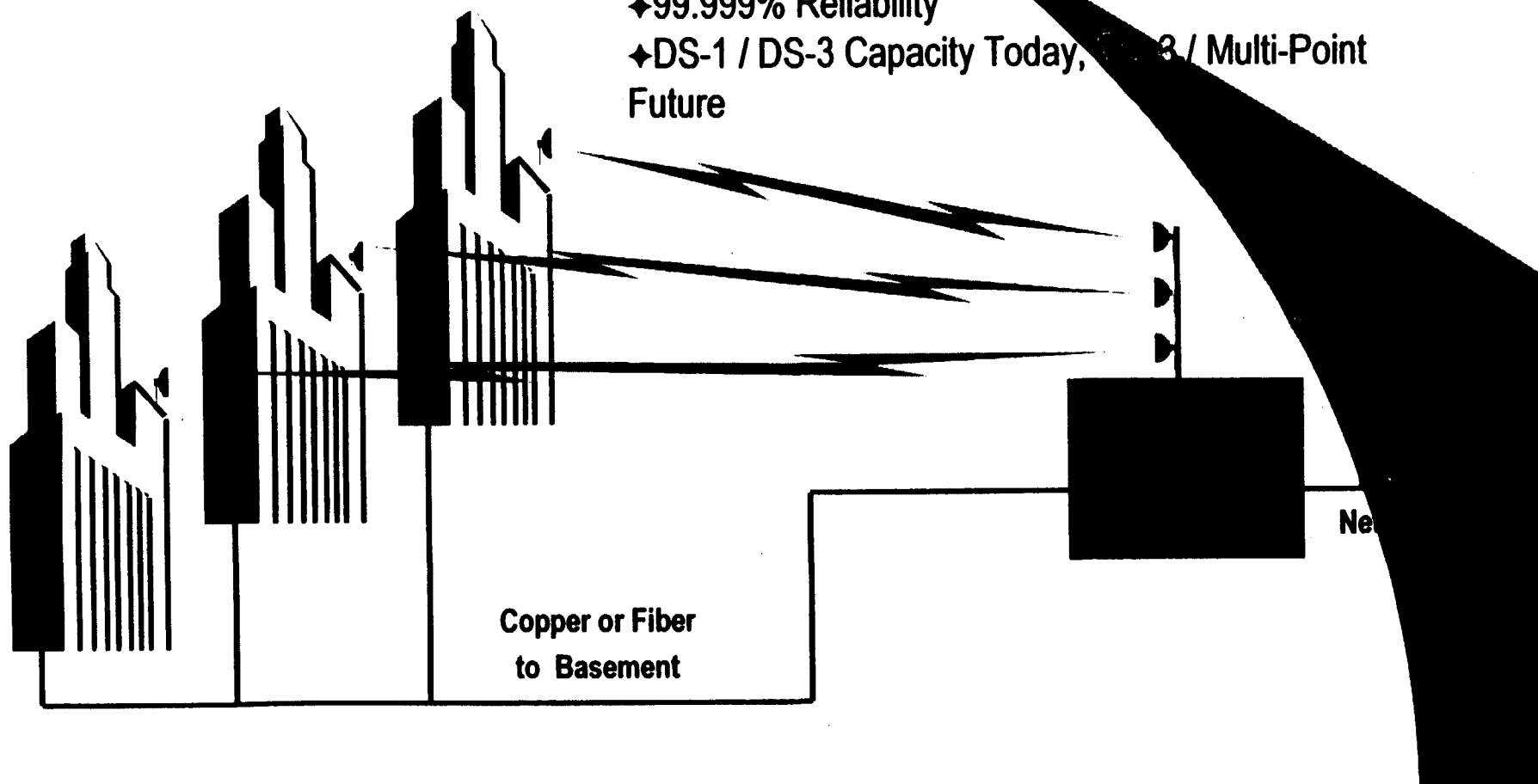


- Authorized to conduct business as a CLEC in 36 jurisdictions
- Authorized to conduct business as a CAP in 36 Jurisdictions
- Traded on NASDAQ (WCII)
- Largest holder of 38 Ghz radio spectrum licenses and terrestrial spectrum in the US
- Current interconnect agreements for over 25 jurisdictions nationwide.

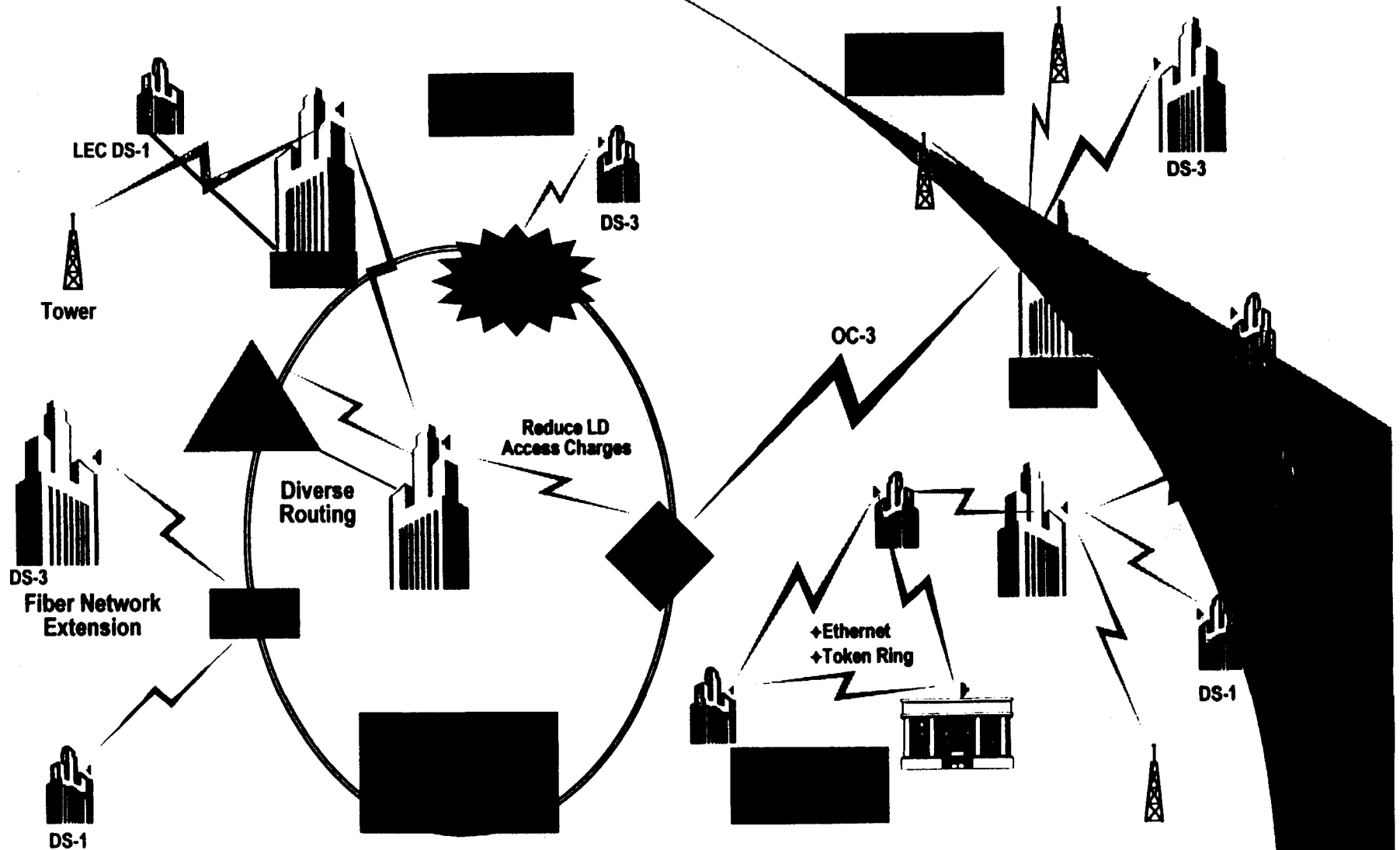
How Wireless Fiber SM Service Works

Lower Cost and Faster Installation

- ◆ 38GHz Digital Broadband Services
- ◆ Point to Point/Line of Sight
- ◆ 99.999% Reliability
- ◆ DS-1 / DS-3 Capacity Today, DS-3 / Multi-Point Future



Wireless Fiber SM Applications



CLEC Authorities as of August, 1998 (36 jurisdictions)

- Alabama, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin

CAP Authorities as of August, 1998 (43 jurisdictions)

- Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin

Interconnection Agreements Executed as of August, 1998

- Ameritech/Illinois
- Ameritech Illinois
Metro/Illinois
- Ameritech/Michigan
- Ameritech/Ohio
- Ameritech/Wisconsin
- Bell Atlantic/District of
Columbia
- Bell Atlantic/ Maryland
- Bell Atlantic/ New Jersey
- Bell Atlantic/Pennsylvania
- Bell Atlantic/Virginia
- NYNEX/Connecticut
- NYNEX/Massachusetts
- NYNEX/New York
- Pacific Bell/California
- SBC/Kansas
- SBC/Missouri
- SBC/Texas
- Southern New England
Telephone (SNET)/Connecticut

Interconnection Agreements Executed as of August, 1998 (Cont'd)

- BellSouth/regionwide (9 states:
Alabama, Florida, Georgia,
Kentucky, Louisiana, Mississippi,
North Carolina, South Carolina,
Tennessee)
- GTE/ California
- GTE/Florida
- GTE/Texas
- GTE//Virginia
- GTE/Washington
- GTE/Michigan
- GTE Minnesota
- Sprint/New Jersey
- Sprint/Virginia (United and Centel)
- Sprint/Texas
- U S West/Arizona
- U S West/Colorado
- U S West/Washington
- US West/ Minnesota
- US West/ New Mexico

Switched Markets Available Today

- Atlanta
- Baltimore
- Boston
- Chicago
- Columbus, OH
- Dallas
- Denver
- District of Columbia
(Metro Area)
- Fort Worth
- Houston
- Kansas City
- Los Angeles
- Newark
- New York
- Philadelphia
- San Diego
- San Francisco
- Seattle
- Tampa

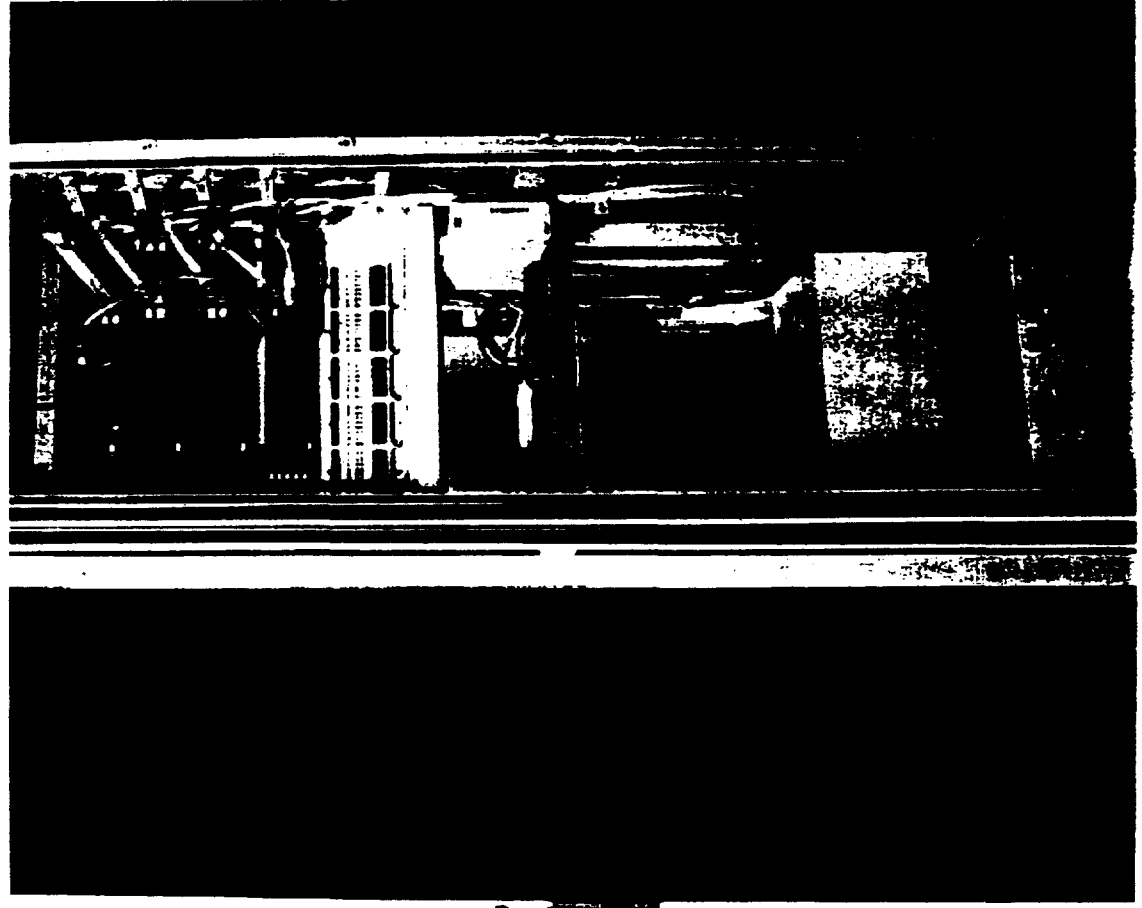
Additional Switch City Markets Being Deployed During '98

- **Cleveland; Detroit; Miami; Milwaukee; Phoenix; Minneapolis; Oakland; Orange County, California; Oak Brook, IL; St. Louis; Stamford**

Typical Installation



Secured Enclosure



Find the Antenna

